IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12-07-2007

CORAM:

THE HONOURABLE MR.JUSTICE A.C.ARUMUGAPERUMAL ADITYAN

CRIMINAL APPEAL No. 149 of 2001
and
Crl.M.P.Nos. 5614 of 2002 & 356 of 2007

Er. S.Karuppusamy ..Appellant/complainant

-vs-

C.Sugumar .. Respondent/accused

This appeal is filed under section 138 of Negotiable Instrument Act against the Judgment passed in C.A.No.238 of 1999 dated 12.1.2001 on the file of IV Additional Sessions Judge, City Civil Court, Chennai against the Judgment in C.C.No.7494 of 1997 dated 30.09.1999 on the file of XV Metropolitan Magistrate, George Town, Chennai.

For appellant : : Mr. T.P.Kathiravan
For respondent: : Mr.K.Kannan

JUDGMENT

This appeal has been preferred against the Judgment in C.A.No.238 of 1999 on the file of IV Additional Sessions Judge, City Civil Court, Chennai which had arisen out of the Judgment in C.C.No.7494 of 1997 on the file of XV Metropolitan Magistrate, George Town, Chennai-1. The complainant had preferred a complaint under Section 200 of Cr.P.C. for an offence under Section 138 of the Negotiable Instruments Act (herein after referred to as "the Act") against the accused.

2. After taking cognizance of the offence, the learned trial Judge has issued summons to the accused, on his appearance furnished copies under Section 207 of Cr.P.C. and when the offence was explained to the accused and questioned the accused pleaded not guilty.

3 Before the trial Court P.Ws 1 to 3 were examined. Exs

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P1 to P13 were exhibited.

3a) P.W.1 is the complainant. According to P.W.1, on 2.4.1997, the accused had received a sum of Rs.50,000/- from him and had drawn a cheque for Rs.50,000/- on the same day and when the cheque was presented on 12.8.1997 for collection, the same was returned with an endorsement "there is no sufficient funds in the account of the drawer of the cheque". Ex P1 is the impugned cheque. Exs P2 and P3 are the returned memo and credit advice of the bank respectively. The complainant had informed about the dishonour of the cheque to the accused on 28.8.1997 under the original of Ex P4 notice. The said notice was received by the accused under Ex P5 acknowledgment. Ex P7 is the letter written by the father of the accused informing that the accused is ready to settle the matter outside the Court. Ex P8 is another notice issued by the complainant to the accused.

3b. P.W.2 is the Manager in State Bank of India, Tondiarpet Branch. He would admit that Ex P1 impugned cheque was presented for collection, but the same was dishonoured on 5.4.1997 and also on 17.8.1997. P.W.3 is the Assistant Manager of Indian Overseas Bank, K.K.Nagar Branch in which the accused is having his account. He would admit that Ex P1 impugned cheque was dishonoured by the bank on the ground that there was no sufficient fund in the account of the accused. Ex P3 is the returned memo sent along with Ex P1 impugned cheque.

4. . When incriminating circumstances were put to the accused under Section 313 Cr.P.C., he has denied his complicity with the crime. The accused has examined himself as D.W1. and exhibited Exs D1 to D6.

5.After going through the evidence both oral and documentary let in before her, the learned trial Judge has held that an offence under Section 138 of the Act has been proved beyond any reasonable doubt against the accused and accordingly convicted the accused under Section 138 of the Act and sentenced him to undergo six months rigorous imprisonment and a fine of Rs.5,000/- with default sentence. Aggrieved by the findings of the learned trial Judge, the accused has preferred an appeal before IV Additional Sessions Judge, City Civil Court, Chennai in C.A.No.238 of 1999. The learned Sessions Judge, after meticulously going through the material records available and after hearing the learned counsel appearing for the appellant as well as the respondent has held that the findings of the learned trial Judge is to be interfered with and accordingly allowed the appeal thereby setting aside the judgment of the learned trial Judge in

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C.A.No.238 of 1999 which necessitated the complainant to prefer this appeal.

6. The point for determination in this appeal is whether the findings of the learned Sessions Judge in C.A.No.238 of 1999 on the file of the IV Additional Sessions Judge, City Civil Court, Chennai is perverse in nature to warrant any interference from this Court?

7. Heard Mr. T.P.Kathiravan, learned Counsel appearing for the appellant and Mr.K.Kannan, learned counsel appearing for the respondent and carefully considered their rival submissions.

8. The Point:

The first appellate Judge has acquitted the accused on two grounds. Mainly in Ex P1 impugned cheque only the amount and the signature were endorsed by the accused and admittedly the date and name of the payee were written by P.W.1 himself. Further in Ex P13 reply notice itself, the accused had stated under what circumstances,Ex P1` cheque was handed over to P.W.1 He would deny in Ex P13 reply notice for having received any consideration under Ex P1 impugned cheque. According to him, the complainant was appointed by the accused as a Manager of the Mineral water Company in the name and style of M/s Mithra Purified Water (P) Limited having its office at door No.38,Kumbalamman Koil Street, Tondiarpet, Chennai-81 and at that time one undated and unnamed cheque and promissory note for a sum of Rs.50,000/- were signed and handed over by the accused to P.W.1 with an instruction, when ever necessity arises and also after informing the accused, the complainant can use the said cheque to borrow a sum of Rs.50,000/- from the third person for investing the same in the water treatment plant for the purchase of 12 litre cane and that the said cheque was not utilized by the complainant till the end of December 1996. It is the case of the accused that after December 1996, the complainant and the accused were not in cordial terms and that a civil case and criminal complaint were lodged between them. He(accused) has specifically stated in the reply notice Ex P13 that he had informed P.W.1 to return the undated and unnamed cheque to him and not to use the same. He has also made a request to the counsel to whom Ex P13 was addressed to instruct his client viz., P.W.1 , the complainant to return the unnamed and undated cheque which was handed over by him in December 1996. For the Ex P13 notice, there is no rejoinder notice sent by the complainant. P.W.1, as observed by the learned first appellate Judge , has admitted in the cross examination that both the name as well as the date in Ex P1 impugned cheque were filled up by him .

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Under such circumstances, it cannot be said that the ingredients stated under Section 138 of the Act is attracted to warrant conviction against the accused as rightly held by the learned Sessions Judge in C.A.No.238 of 1999. Hence, I do not find any perverseness in the findings of the learned first appellate Judge to interfere with the same. The point is answered accordingly.

9. In fine, the appeal is dismissed confirming the Judgment in C.A.No 238 of 1999 on the file of IV Additional Sessions Judge, City Civil Court, Chennai. Consequently, connected Crl.M.P.Nos.5614 of 2002 and 356 of 2007 are also dismissed.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

sg

To

1. The XV Metropolitan Magistrate, George Town, Chennai

2. -do- through the Chief Metropolitan Magistrate, Egmore, Chennai

3. The IV Additional Sessions Judge, City Civil Court, Chennai

4. The Principal Sessions Judge, City Civil Court, Chennai.

5.The Public Prosecutor, Madras.

+1cc to Mr.T.P.Kathiravan, Advocate Sr 42170
+1cc to Mr.K.Kannan, Advocate Sr 42321

VC(CO)
km/20.7.

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